

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8788 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MUNIRKHAN ABBASKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 08/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 28th September, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The grounds of detention suggest that one offence under Prohibition law has been registered against the petitioner. Further, the police had collected some evidence by examining witnesses to establish that the activities of the petitioner, apart from being anti-social, are also prejudicial to the maintenance of public order.

Be it noted that one Israil Nazir Ahmed Shaikh is also the co-accused in the offence registered against the petitioner. There are other 19 offences registered against the said Israil for violation of prohibition law, and two offences under the IPC. The said Israil also was detained under the Act under the order dated 19th February, 1999 . The said order of detention was challenged before this court in Special Civil Application No. 1913/99. This court (Coram : Mr.Justice D.C.Shrivastav) under its judgment dated 24th April, 1999, held that though several offences were registered against the said detenu, neither of the said offences was prejudicial to the maintenance of public order. Besides, the statements given by the witnesses also do not disclose the element of disturbance of public order.

In the present case, the petitioner is co-accused of the said Israil in one of the offences. The statements given by the witnesses, though are of different dates and of different incidents, disclose the similar nature of activities. Since the Bench of this court has held such activities not to be prejudicial to the maintenance of public order, I shall follow suit. In the present case also, it is, therefore, required to be held that the materials on record do not disclose the petitioner's activities to be prejudicial to the maintenance of public order. The petitioner, therefore, could not have been detained under the Act. The continued detention of the petitioner is also un-warranted.

Petition is, therefore, allowed. The impugned order dated 28th September, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI